BEARD OIL CO.

IBLA 86-1546 Decided July 27, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting in part oil and gas lease offer NM-A 62567 (TX), requiring description of remaining available land, and requiring execution of special stipulations.

Affirmed in part, modified in part, and remanded.

1. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Description of Land--Oil and Gas Leases: Non- competitive Leases--Oil and Gas Leases: Offers to Lease

A party making an over-the-counter oil and gas lease offer for land not surveyed under the rectangular system of the public land survey is required to provide a description of the land for which the offer is made as stated in 43 CFR 3111.2-2(b). It is the responsibility of the Bureau of Land Management to satisfy itself that the land described in the offer is available for leasing and that the lease may properly be issued.

APPEARANCES: John R. Brown, Assistant Vice President, for appellant Beard Oil Company.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Beard Oil Company has appealed a July 7, 1986, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting in part oil and gas lease offer NM-A 62567 (TX), requiring a description of the remaining available land, and requiring execution of special stipulations. Appellant's application was for two parcels of acquired land in the Sabine National Forest, Sabine County, Texas. BLM's decision rejected that portion of each parcel which lies within the known geologic structure (KGS) of the Hemphill-Pineland KGS because 30 U.S.C. | 226(b) (1982) permits land within a KGS to be leased only by competitive bidding. As to the remaining portion of appellant's lease offer (approximately 186.25 acres), BLM's decision informed appellant that it was required to execute special stipulations enclosed with the decision and also stated:

> [A] metes and bounds description is required of the available land by courses and distances between successive angle points on its

> boundary tying by courses and distance into the description in the deed or other document by which the United States acquired title to the lands (Title 43 CFR, Part 3111.2-2(b)).

Appellant executed and returned the special stipulations with its notice of appeal. The company's statement of reasons addresses the remaining two aspects of the decision. In regard to the partial rejection of its lease offer because the land was within the Hemphill-Pineland KGS, appellant requested consolidation of this appeal with previously consolidated appeals of decisions rejecting lease offers for lands within the same KGS, including offers by Beard Oil Company. Appellant noted that the lands in the present offer are within the John S. Lacy Survey, A-28, which the company had discussed in a statement of reasons filed as part of the consolidated appeals. BLM's response to appellant's statement of reasons similarly requested the Board adopt the answer to the statement of reasons BLM filed in the consolidated appeals.

Consolidation was not granted. A decision on the consolidated appeals was issued September 8, 1987. Beard Oil Co., 99 IBLA 40 (1987). The decision upheld the KGS determination and affirmed BLM's rejection of appellant's lease offers. Because no additional arguments were raised in the present appeal, the decision on the consolidated appeals is controlling. Accordingly, the portion of BLM's decision rejecting appellant's lease
offer in part as to lands within the Hemphill-Pineland KGS is affirmed.

Appellant's statement of reasons additionally addresses that portion
of BLM's decision quoted above. In particular, appellant objects to the use of the word "available." The company contends that under controlling law it is required to supply a description of the lands it desires to lease; it is not required to submit a description of land actually available for leasing; and BLM is without authority to impose such a requirement. Appellant also expresses concern that if the company attempted to provide a description of available land which was later found to be defective, the result might be loss of priority of its lease offer. With its notice of appeal appellant provided "a legal description of the lands within the Moses Hill Survey, A-117." From the record before us, it appears that these are the lands which were included in appellant's lease offer and not rejected as being within the Hemphill-Pineland KGS.

[1] Appellant is clearly correct about the law. The applicable regulation states:

> If the lands have not been surveyed under the rectangular system of public land surveys, they shall be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired lands constitute less than the entire tract acquired by the United States, it shall be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the lands. [Emphasis supplied.]

43 CFR 3111.2-2(b). The basis of this provision of the regulations, as with other portions of the regulations requiring descriptions of lands in lease offers, is obvious. Because lands may be unavailable for leasing for a variety of reasons, it may not be possible for a party to determine with certainty whether a parcel of land is in fact available for leasing. In addition, events which make the land unavailable, such as a determination that the land is within a KGS, may occur between the date of the lease offer and the date of review of the offer by BLM. Thus, the standard lease form sent to BLM by appellant (Form 3100-11 (March 1984)) states that the signator "offers to lease all or any of the lands in item 2 [containing the land description] that are available for lease." Under this language, the offer does not purport to describe the lands available for leasing, but rather conditions the offer upon the availability of the lands described. It is BLM's responsibility to satisfy itself that the land described in the offer may properly be leased. See Bruce Anderson, 85 IBLA 270, 271 (1985). Recently, BLM has also acknowledged the distinction:

> When applying for any lease, the offeror need not apply for only the lands available for leasing. It is the responsibility of the lessor (BLM) to determine which lands are available, describe them on the lease, and reject the remaining. Lessees are responsible only for properly describing the outer boundary of the applied for lands. [Emphasis supplied.]

Instruction Memorandum No. 88-167 (Dec. 23, 1987).

Appellant carefully and cautiously noted the variation in BLM's use of terminology in its decision. While we agree with appellant's understanding of the law, we do not believe that BLM was attempting to place an improper burden on the company by using the word "available" in its decision. Rather, in the circumstances it appears that the drafter of the decision, having rejected some of the described lands as unavailable because of the KGS, used the term "available" to indicate the remaining lands were not unavailable. The intent was simply to inform the company that it was required to submit a description of the remaining land not within the KGS. It was not intended, and could not have properly been intended, to place on the company the burden of determining the availability of the land. This is also indicated in the next paragraph of the decision which correctly states: "The responsibility of furnishing a proper and adequate description of the desired lands in an oil and gas offer is upon the offeror." Accordingly, we will modify BLM's decision to state that "a metes and bounds description is required of the desired land remaining in the offer * * *."

Our decision should place appellant's lease offer back on track without loss of priority. It remains for BLM to determine whether the lands described in the document submitted with the notice of appeal are available for leasing and that all else is proper.

Having reached the conclusion stated above, we deem it appropriate to note two events which have occurred since the issuance of the BLM decision. Although neither has a direct bearing on the case at hand, they do have an effect on the precedential value of this decision.

Under the principle set out in Margaret A. Ruggiero, 34 IBLA 171 (1978), the above quoted IM is binding on all State Offices with respect to all decisions made subsequent to the date of issuance. It would therefore appear that for decisions issued after December 23, 1987, the State Offices are prohibited from requiring an offeror to submit a description of the available lands.

It also appears that upon passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), P.L. 100-203, 101 Stat. 1330-256,
the issue in this case has been mooted for all future applications. Thus the precedential value of this decision applies only to those applications pending at the time of FOOGLRA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, modified in part, and remanded for further action not inconsistent with this decision.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge